

INT THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.

Pattiwilage Vincent Fernando
(Kapu Mahathmaya)

Accused-Appellant

C.A.NO. 69/2011

H.C. Negombo No. 512/2005

Vs.

Hon. The Attorney General

Respondent

BEFORE : SISIRA J. DE ABREW, J (ACTING P/CA) &
P.W.D.C.JAYATHILAKA, J.

COUNSEL : Dr. Ranjit Fernando for the Accused-
Appellant.

Dileepa Peiris SSC for the Respondent.

ARGUED AND

DECIDED ON : 23rd January, 2014.

SISIRA J. DE ABREW, J.(ACTING P/CA)

Accused appellant produced by the Prison Authorities is
present in Court.

Heard both Counsel in support of their respective cases.

The accused – appellant in this case was convicted for raping a girl under 16 years of age and was sentenced to a term of 12 years rigorous imprisonment and to pay a fine of Rs. 5000/- carrying a default sentence of 06 months simple imprisonment and to pay a sum of Rs.100,000/- as compensation to the victim carrying a default sentence of 01 year rigorous imprisonment on Count No.1.

He was also convicted for the offence of sexual harassment which is an offence under section 345 of the Penal Code and was sentenced to a term of 3 years rigorous imprisonment and to pay a fine of Rs.5000/- carrying a default sentence of 6 months simple imprisonment. This was the 2nd Count. Being aggrieved by the said conviction and the sentence he has appealed to this Court. Learned Counsel for the accused-appellant submits that he does not challenge the conviction. He submits that the sentence imposed by the learned trial Judge is excessive and therefore makes an application to reduce the sentence. Learned High Court Judge directed that both terms of imprisonment on count No: 1 and 2 should run consecutively. Facts of this case may be briefly summarized as follows:-

The accused–appellant is a person in-charge of a temple (Devalaya). On the day of the incident the victim and her brother and

another outsider had gone to meet the accused –appellant in order to perform some religious activities. According to the religious activities that he was going to perform, a young girl should be kept in the premises of Devalaya in the night. In the evening the accused-appellant has applied oil on the private part of the victim girl. The accused-appellant in the night has performed sexual intercourse on the girl twice. The doctor who examined the girl two days after the incident, tried to insert the tip of the index finger into the vagina. But the orifices of the vagina did not permit such insertion. However, Doctor does not exclude the labial penetration. The accused – appellant at the time of the incident was 58 year old man. Counsel for the accused-appellant submits that he is now 70 year old man. At the time of the incident the girl was 10 years old. Considering all these matters, we make the following order:-

We do not intend to interfere with the 12 years rigorous imprisonment and 3 years rigorous imprisonment imposed on the accused-appellant on Count No: 1 and Count No:2 respectively. However, we direct that both terms of imprisonment (12 years rigorous imprisonment and 3 years rigorous imprisonment) should run concurrently. We direct the Prison Authorities to implement the sentence from the date of sentencing by the learned trial Judge.

We also do not interfere with the fine and the compensation ordered by the learned trial Judge. Subject to the above variation of sentence, appeal of the appellant is dismissed. Learned trial Judge is directed to issue a fresh committal.

Appeal dismissed.

ACTING PRESIDENT OF THE COURT OF APPEAL

P.W.D.C.JAYATHILAKA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Kwk/=